

E-Filed: August 30, 2013

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Profit Sharing Plan

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In Re:

WILLIAM GAYLER,

Debtor.

Case No: BK-S-09-31603-MKN
Chapter: 7

Hearing Date: September 4, 2013
Hearing Time: 3:00 pm

SUPPLEMENTAL DECLARATION OF DALE A. HAYES, ESQ.
IN SUPPORT OF MARQUIS AURBACH COFFING'S OPPOSITION TO
TRUSTEE'S MOTION TO DISQUALIFY COUNSEL FOR JOHN D. O'BRIEN
PROFIT SHARING PLAN AND COUNSEL FOR BARRY R. MOORE AND JANIE
MOORE AS CO-TRUSTEES OF THE BMM LIVING TRUST
DATED JULY 16, 2003, GROTH, LLC, CH. PICHON, LLC, AND HARLAN, LLC
THROUGH THEIR MANAGING MEMBER JOHN O'BRIEN AND
IN RESPONSE TO THE TRUSTEE'S REPLY BRIEF

Dale A. Hayes makes this Declaration under 28 U.S.C. § 1746 and states:

1. I am over the age of 18 years and have personal knowledge of the facts stated herein, except for those stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law and will so testify if called upon.

2. I am a shareholder with the law firm of Marquis Aurbach Coffing. I make this Supplemental Declaration in support of Marquis Aurbach Coffing's Opposition to Trustee's Motion to Disqualify Counsel for John D. O'Brien Profit Sharing Plan and Counsel for Barry R. Moore and Janie Moore as Co-Trustees of the BMM Living Trust Dated July 16, 2003, Groth,

1 LLC, Ch. Pichon, LLC, and Harlan, LLC through their Managing Member John O'Brien and in
2 Response to the Trustee's Reply Brief.

3 3. I have reviewed Trustee David A. Rosenberg's Reply in Support of Trustee's
4 Motion to Disqualify Counsel for John D. O'Brien Profit Sharing Plan and Counsel for Barry R.
5 Moore and Janie Moore as Co-Trustees of the BMM Living Trust Dated July 16, 2003, Groth,
6 LLC, Ch. Pichon, LLC, and Harlan, LLC through their Managing Member John O'Brien
7 ("Reply") as well as the Declaration of David A. Rosenberg in Support of the Reply.

8 4. The Trustee's Reply is the classic example of litigation by ambush, as the Trustee
9 through his attorney, Kim, has knowingly and willfully misrepresented the facts to the Court
10 hoping the falsehoods would go unchallenged.¹

11 5. I am not a creditor in the Bankruptcy of William A. Gayler, nor is my Trust. At
12 Page 5 of the Reply, the Trustee falsely states,

13 Thus, if all of Gayler's assets were administered and liquidated in the Bankruptcy
14 Estate, the majority of monies coming into the Estate would be for the benefit of
15 the IRS; **the MAC creditors and individuals like Phillip Aurbach and Dale
Hayes would get little if anything.** (Emphasis added.)

16 Since I am not a creditor of the Gayler Bankruptcy, I get no money that may come into the
17 Bankruptcy Estate. The inference that I stand to gain somehow if Gayler's assets were
18 improperly administered and liquidated is patently false.

19 6. In addition, at Page 4 of the Reply, it states:

20 Moreover, two of MAC's partners/attorneys, Dale Hayes **and** Phillip Aurbach,
21 **personally held membership interests in several of the Gayler entities while
working on these matters for the Estate.** (Emphasis added.)

22 In support of this false assertion, the Trustee directs this Court to Exhibit 1, a hearsay document
23 which purports to be a William Gayler Estate Summary. I have never held a membership
24 interest in *several* of Gayler's entities. Rather, my Trust was a owner of .5 shares of one entity,
25 DA 1147, LLC, which was co-managed by Barry R. Moore and Mr. Gayler through Screaming
26

27 ¹ The Bankruptcy Trustee, through his attorney, Kim, assert new arguments for the first time in their
28 Reply knowing that the Rules of Procedure allow for a motion, followed by an opposition, followed by a
reply.

1 Eagle II, LLC. DA 1147, LLC's sole asset was sold in November of 2007—two years before
2 Gayler was put in Bankruptcy as discussed below.²

3 7. Presumably, the William Gayler Estate Summary, Exhibit 1, was prepared based
4 upon the representations of the Debtor William A. Gayler. The Trustee and his counsel, Kim,
5 were and are acutely aware that Mr. Gayler was found guilty of actual fraud before Judge
6 William A. Thurman in Adversary Proceeding No. 11-01027-MKN. Moreover, Mr. Gayler
7 confessed actual fraud in Adversary Proceeding No. 11-01088-MKN. In addition, in Case No.
8 A-09-596777-C in State Court involving Ch. Angelus, LLC and Ch. Angelus II, LLC, Mr.
9 Gayler was found by Judge Denton to have engaged in “manifest self-dealing” and based on that
10 finding found the Deed of Trust securing a \$2 million loan and a Promissory Note invalid.
11 Furthermore, in Case No. A-10-616929-C in State Court, Judge Denton declared the Promissory
12 Note and Deed and Trust null, void and invalid based on the wrongful conduct of Mr. Gayler.
13 Finally, Mr. Gayler has been indicted for his criminal conduct associated with the handling of the
14 Diamante Rose, LLC investment in Adversary Proceeding No. 11-01027-MKN. On information
15 and belief, the information contained on Exhibit 1 of the Reply related to the William Gayler
16 Estate Summary was predicated upon the representations of a known fraud and criminally
17 indicted individual, Mr. Gayler, yet the Trustee and his attorney, Kim, present it to this Court as
18 gospel.

19 8. With that backdrop, Trustee Rosenberg through his counsel, Kim, on two
20 occasions in his Reply states that I, “Personally held membership interest in several of the
21 Gayler’s entities while working on these matters for the Estate.”³ The foregoing is absolutely
22 false in that neither my Trust nor I “personally held membership interest in several of the Gayler
23 entities.” Rather, I invested with Barry R. Moore in DA 1147, LLC. DA 1147, LLC was
24 managed by Screaming Eagle II, LLC whose principals were William A. Gayler and Barry R.
25

26
27 ² See DA 1147, LLC Member Correspondence dated December 17, 2007 attached hereto as **Exhibit U**.

28 ³ See Reply at pp. 4 and 5.

1 Moore. Thus, I never worked on matters for the Estate while holding a membership interest as
2 falsely represented by the Trustee through his counsel, Kim.

3 9. It is important to note the DA 1147, LLC property was sold in November of 2007
4 with checks disbursed on December 17, 2007, two years before Gayler was placed in individual
5 bankruptcy in November of 2009.⁴ Accordingly, neither I nor my Trust “personally held
6 membership interest in several of the Gayler entities” as indicated in the Reply of the Trustee.
7 The foregoing was patently false as stated above and I invested in only one LLC involving Mr.
8 Gayler, DA 1147, LLC, with Mr. Moore as a co-manager.

9 10. In the Reply, the Trustee states at Page 5,

10 Thus, if all of Gayler’s assets were administered and liquidated in the Bankruptcy
11 Estate, the majority of monies coming into the Estate would be for the benefit of
12 the IRS: **The MAC creditors and individuals like Phillip Aurbach and Dale
Hayes would get little if anything.** (Emphasis added.)

13 As set forth above, I am not a creditor of the Bankruptcy Estate of Mr. Gayler nor do I have an
14 interest in any assets that may be liquidated in the Bankruptcy Estate of Mr. Gayler. Therefore,
15 Page 5 of the Reply relating that I would get little if anything if the assets were properly
16 administered and liquidated in the Bankruptcy Estate of Gayler is patently false and the Trustee
17 and his attorney, Kim, know it.

18 11. In addition to the above, the Trustee reiterates at Page 5 of the Reply, “Moreover,
19 MAC did not disclose the fact that two of its attorneys, Dale Hayes and Phillip Aurbach, **hold**
20 **membership interests in several of the Gayler entities.**” (Emphasis added.) As set forth
21 above, my Trust owned a .5 interest in DA 1147, LLC which was sold in November of 2007, two
22 years prior to Mr. Gayler’s bankruptcy.

23 12. The Trustee is trying to imply collusion between MAC and the clients I have
24 personally represented since May 1, 2008 ostensibly to prevent assets from coming into the
25 Estate of the debtor, Mr. Gayler. The foregoing is patently false. Absent my and Liane,
26 Wakayama’s representation of the creditors, the assets the Trustee so vociferously is trying to
27 take possession of, would have been lost to foreclosure by the lenders. In that regard, Ch.

28 ⁴ See Exhibit U.

1 Angelus, LLC and Ch. Angelus II, LLC were obligated on a Promissory Note in the amount of
2 \$2 million in favor of the Alper Lenders. Absent action by me and Ms. Wakayama on behalf of
3 the creditors, the Alper Lenders would have foreclosed and there would have been no money for
4 the Trustee to argue over. The same analysis applies to Ch. Angelus IV, LLC, absent action by
5 me and Ms. Wakayama to save the investment, the Alper Lenders would have foreclosed and the
6 investment would have been lost. To suggest MAC's conduct, and mine personally, sought to
7 benefit the creditors at the expense of the Bankruptcy Estate is a total perversion of the truth.

8 Dated this 30 day of August, 2013.



DALE A. HAYES

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Exhibit U

DA 1147 LLC

4035 So. Tenaya Way 3200
Las Vegas, NV 89147
(702) 362-5100

MEMBER CORRESPONDENCE

To: DA 1147 LLC Members

From: William Gayler

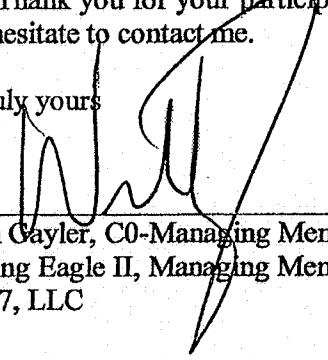
Date: December 17, 2007

Subject: Property Sale

We are pleased to inform you that the sale of the property has closed and the CPA's have approved of our sale summary and distribution summary. Enclosed is your pro rata check, closing statement and closing summaries. We will forward a complete closing package in the near future.

Thank you for your participation in this investment and if you have any questions, please do not hesitate to contact me.

Very truly yours



William Gayler, CO-Managing Member
Screaming Eagle II, Managing Member
DA 1147, LLC

DA 1147 LLC Sale Summary
11/4/2007

Shares	Member	Return of Capital \$ 100,000.00 Per Share	Sale Proceeds \$ 159,154.83 Per Share	Total Check
1	Alderson	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
- 5	Alexander Dawson Foundation	\$ 500,000.00	\$ 795,774.15	\$ 1,295,774.15
- 1	Joseph Borini	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
- 1	Mario Borini	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
2 4/8	Tom Brown	\$ 250,000.00	\$ 397,887.08	\$ 647,887.08
- 4/8	Donald Campbell	\$ 50,000.00	\$ 79,577.42	\$ 129,577.42
- 1	Donald Campbell PS	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
1	William Gialketsis	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
1	Frank Hansen	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
- 1	L Harris	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
2/8	Harrison	\$ 25,000.00	\$ 39,788.71	\$ 64,788.71
- 4/8	Hayes	\$ 50,000.00	\$ 79,577.42	\$ 129,577.42
3/8	Icon PS	\$ 37,500.00	\$ 59,683.06	\$ 97,183.06
1	Kempf	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
- 1	Leavitt Bros	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
6	LeBow	\$ 600,000.00	\$ 954,928.98	\$ 1,554,928.98
- 4/8	Lomento	\$ 50,000.00	\$ 79,577.42	\$ 129,577.42
- 3/8	McCauley	\$ 37,500.00	\$ 59,683.06	\$ 97,183.06
- 2	Moore	\$ 200,000.00	\$ 318,309.66	\$ 518,309.66
- 1 1/8	Morley	\$ 112,500.00	\$ 179,049.18	\$ 291,549.18
- 5	Norris	\$ 500,000.00	\$ 795,774.15	\$ 1,295,774.15
- 2	John O'Brien	\$ 200,000.00	\$ 318,309.66	\$ 518,309.66
- 1	John O'Brien PS	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
3/8	Rich Plaut	\$ 37,500.00	\$ 59,683.06	\$ 97,183.06
4/8	Ringer	\$ 50,000.00	\$ 79,577.42	\$ 129,577.42
- 2	Pius Reiger	\$ 200,000.00	\$ 318,309.66	\$ 518,309.66
1	Roses Inv	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
- 1	Schnippel	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
1	Tripp	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
- 1	Colby Williams	\$ 100,000.00	\$ 159,154.83	\$ 259,154.83
		\$ -	\$ -	\$ -
43		\$ 4,300,000.00	\$ 6,843,657.69	\$ 11,143,657.69

12/17/2007

DA 1147 LLC Expense to be Reimbursed @ Closing

\$	1,000.00	Clark Co Plan Review Fee	Jul-03
\$	3,153.00	Jawa Architecture Space Design	Mar-03
\$	5,000.00	Perlman Schematic Design	May-03
\$	8,250.00	Perlman Schematic Design	Jul-03
\$	22,050.00	Perlman Schematic Design	Dec-03
\$	2,852.00	Clark Co Tentative Map Fee	Nov-03
		Zone Change App	
\$	24,520.00	Keith Co Engineering	Jan-03
\$	8,300.00	Converse Soil Test/Clean	Dec-03
\$	23,062.00	Advertising/Signage (Sign a Rama, Rojas Grp, Newtext, Vega Pave, Kinkos	2004
\$	1,000.00	Political Science Zone Consult	2004
\$	27,325.00	Perlman Architecture Conceptual	2004
\$	20,906.00	Keith Co Engineering	2004
\$	14,580.97	Keith Co Engineering IRE	2004
\$	14,576.00	Keith Co Engineering SE	2004
\$	17,733.00	Converse Soil Test/Clean	2004
\$	17,000.00	Perlman Architecture Conceptual	2005
\$	10,387.00	Keith Co Engineering IRE	2005
\$	25,000.00	Perlman IH	Dec-05
\$	14,728.00	Clark Co Plan Review Fee	Dec-05
\$	7,590.00	Perlman Design & Planning	Mar-06
\$	4,600.21	Stantec Engineering	Mar-06
\$	3,287.50	Marquis & Aurbach Legal	Mar-06
\$	3,018.00	Gerety Accounting	Mar-06
\$	277,641.35	Nv State Bank Int	3-10/1/06
\$	3,500.00	" Extension Fee	
\$	296.72	Bank/Check Fees	
\$	18,500.00	Stantec Contract	
\$	27,407.50	Perlman Invoice Balance	
\$	11,443.75	Legal Fees Icon	
\$	100.00	Business License Renewal	
\$	2,000.00	Appraisal Fee	
\$	1,500.00	LAS Consult MUD Report Eng Stamp (pd for Centex)	
\$	5,000.00	LAS Consult MUD App, Zone Change (pd for Centex)	
\$	1,000.00	CC Design Study (pd for Centex)	
\$	875.00	CC Land Mitigation Fee (pd for Centex)	
\$	200.00	CC BLA Submittal (pd for Centex)	
\$	93.00	Recording Fees (pd for Centex)	
\$	57,910.39	Property Taxes	
\$	26,214.00	Stantec	
<hr/>			
\$	713,600.39		
\$	1,000,000.00	Deposit 3/1/07	
\$	(713,600.39)	Less Revised Expenses	
\$	61,938.00	Sign Rent to 11/30/07	
\$	(30,500.00)	3/2003-11/2007 Management (\$500. mo)	
\$	(370.10)	Blueprints	
\$	(1,209.00)	Stantec extra	

12/13/2007